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PTO TRANSMITTAL FORM OCT 02 2006 U.S. PATENT & TRADEMARK OFFICE <small>Use this form for all correspondence after initial filing</small>	Application Number	09/993,904	
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	First Named Inventor	Jax B. Cowden	
	Art Unit	2151	
	Examiner Name	Divecha, Kamal B.	
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ENCLOSURES (check all that apply)		
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Date	September 28, 2006	Reg. No.	40,909

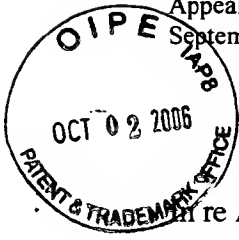
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Docket No. 10005.000130

Appeal Brief

September 28, 2006



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of:

Jax B. Cowden et al.

Application No.: 09/993,904

Examiner: Divecha, Kamal B.

Filing Date: November 27, 2001

Art Unit: 2151

Assignee: Claria Corporation

Title: Method And Apparatus For Providing Information Regarding Computer Programs

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF FILED UNDER 37 C.F.R. § 41.37

Sir:

This appeal brief follows the Notice of Appeal filed by Applicants on September 27, 2006.

This is the second appeal brief filed on this application. The first appeal brief was filed by Applicants on March 3, 2006. The Board of Patent Appeals and Interferences ("Board") did not render a decision on the first appeal brief; the Examiner responded to the first appeal brief with a non-final office action rather than an Examiner's Answer.

Applicants believe that they are entitled to the appeal brief fee paid on March 3, 2006 because the Board did not render a decision on the first appeal brief. Therefore, Applicants believe that an appeal brief fee is not required for this second appeal brief.

If for any reason additional fees are required, the Commissioner is hereby authorized to charge the insufficiency to Deposit Account No. 50-2427.

I. REAL PARTY IN INTEREST

The real party in interest is Claria Corporation of Redwood City, California, which is the assignee of the present application.

II. RELATED APPEALS AND INTERFERENCES

On information and belief, there are no appeals, interferences, or judicial proceedings known to the appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 1, 2, and 4-7 are pending in this application and stand rejected.

Claims 1, 2, and 4-7 are being appealed. These claims are rejected in the non-final office action mailed June 1, 2006 ("last office action").

IV. STATUS OF AMENDMENTS

All amendments filed before the last office action have been entered in the application.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter relates to providing third-party information about downloadable computer programs before a user installs such programs in his or her computer. The claimed subject matter is particularly beneficial on the Internet where there are a multitude of programs available for download. The claimed subject matter provides third-party information about a program to help users decide whether or not to install the program. For example, FIG. 9A of the specification shows a dialog box 901 inviting the user to install a downloadable program on her computer. In response to the

download offer, in FIG. 9B, a message box 902 containing third-party information about the offered downloadable program is displayed to the user, allowing the user to make a more meaningful decision as to whether or not to install the program on her computer.

See also, specification, page 28, line 20 to page 29, line 5.

Independent claim 1 recites a method of providing product information to a user, the product being a computer program (Specification, page 28, lines 6-12). The method involves detecting an occurrence of a first window (Specification, FIG. 9A, dialog box 901) in a computer (Specification, FIG. 3, listener 306; page 11, lines 4-9). A determination is made as to whether the first window includes an offer to download a program (Specification, FIG. 3, window analyzer 308; page 27, line 16 to page 28, line 5). The program is identified (FIG. 3, product list 322; page 28, lines 2-19). A second window containing third party information about the program is displayed to aid the user in deciding whether or not to install the program (Specification, FIG. 9B, page 28, line 20 to page 29, line 5).

Independent claim 7 recites a computer memory with the following features: a listener (Specification, FIG. 3, listener 306), a product list (Specification, FIG. 3, product list 322), a window analyzer (Specification, FIG. 3, window analyzer 308), and a user interface manager (Specification, FIG. 3, user interface manager 320). The listener allows for detection of opening of a new window (Specification, page 11, lines 5-7). The product list includes a listing of computer programs and a description of each computer program (Specification, page 28, lines 6-19). The window analyzer allows for detecting whether a new window is offering a computer program listed in the product list for download (Specification, page 27, line 17 to page 28, line 5; page 28 line 21 to page 29, line 3). The user interface manager allows for displaying third party information about the computer program offered in the new window (Specification, page 20, lines 13-15; page 28, line 23 to page 29, line 3).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following are to be reviewed on appeal:

- 1) The rejection of claims 1, 2 and 4-7 under 35 U.S.C. §101 as being directed to non-statutory subject matter.
- 2) The rejection of claim 7 under 35 U.S.C. § 101 as lacking patentable utility.
- 3) The rejection of claims 1, 2 and 4-6 under 35 U.S.C. §112, second paragraph, as being indefinite.
- 4) The rejection of claims 1, 2, and 4-7 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,327,617 to Fawcett ("Fawcett") in view of U.S. Patent No. 6,011,537 to Slotznick ("Slotznick").

VII. ARGUMENTS

Applicants respectfully traverse the aforementioned rejections.

A. CLAIMS 1, 2 and 4-7 (35 U.S.C. § 101 -- Statutory Subject Matter)

Claims 1, 2, and 4-7 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The rejection is respectfully traversed.

According to the last office action, claim 1 does not fall into any of the four categories of statutory subject matter because it recites a method to be performed by a computer program. Applicants respectfully disagree with this conclusion. Claim 1 recites a method to be performed by computer-readable program code running in a computer. Such a method is a process in the context of 35 U.S.C. § 101. In fact, MPEP 2106.01(I) (page 2100-18) is explicit that: "when a computer program is claimed in a process where the computer is executing the computer program's instructions, USPTO personnel should treat the claim as a process claim." Note that claim 1 is not directed to a mere listing of a computer program, but rather to a method (i.e. actions of a process) performed by the computer program running in a computer.

The last office action also contends that claim 1 does not produce useful, concrete, and tangible results and that a human being using pen and paper can simply conduct the steps involved in claim 1. It is not clear as to how the just-mentioned contentions affect the subject matter patentability status of claim 1 in terms of 35 U.S.C. § 101. As

explained above, claim 1 recites a process – a patentable subject matter. Claim 1 does not fall into any of the Judicial Exceptions either. See Guidelines Flowchart in determining whether the claimed invention complies with the subject matter eligibility requirements in the MPEP (page 2100-16).

In any event, claim 1 displays third party information about a computer program the user is about to download – there is no question as to the method’s utility as it helps users make informed decisions about downloadable computer programs. “Useful” under 35 U.S.C. § 101 requires practical utility and claim 1 readily satisfies that requirement by displaying pertinent information to users. “Tangible” is the opposite of “abstract.” The tangible requirement mandates that the claim must set forth a practical application. As discussed above, displaying third party information about downloadable computer programs to users is a practical application. “Concrete” is the opposite of “unrepeatable or unpredictable.” The concrete requirement mandates that a process must substantially produce the same result again. There is no question that the method of claim 1, being a computer program run by a computer, will repeatedly work as claimed whenever the user is presented a window with an offer to download a computer program. MPEP2106(IV)(C)2(2)a)-c) (page 2100-12).

Therefore, claim 1 and dependent claims 2 and 4-6 recite patentable subject matter.

The last office action does not provide any reason why claim 7 does not recite patentable subject matter. In any event, claim 7 recites computer memory comprising computer-readable program code, which is well established as patentable subject matter. See also MPEP 2106.01(I) (page 2100-18) (“When a computer program is recited in conjunction with a physical structure, such as computer memory, USPTO personnel should treat the claim as a product claim.”).

B. CLAIM 7 (35 U.S.C. § 101 -- Utility)

Claim 7 is rejected under 35 U.S.C. § 101 as lacking patentable utility. The rejection is respectfully traversed.

According to the last office action, claim 7 “fails to disclose the practical application and/or the utility. In other words, claim fails to disclose the problem to be

solved and/or utility of the invention.” The last office action also contends that claim 7 “fails to produce any useful, concrete and tangible results.” It is respectfully submitted that the last office action does not provide any reason for the assertions, thus failing to prove a *prima facie* case of lack of utility.

In any event, claim 7 recites a computer comprising computer-readable program codes. The computer-readable program codes interact in a way that results in displaying of “third party information about the computer program offered in the new window.” As explained above, such third party information provides users useful information for making an informed decision about a downloadable computer program, a feature which is especially beneficial on the Internet where there are a lot of unknown downloadable computer programs. Claim 7 recites a tangible (i.e., not abstract) application that may be employed by computer users to get a display of third party information about a downloadable computer program. Claim 7 also recites a concrete (i.e., repeatable) result. For example, claim 7 would consistently result in displaying of third party information for downloadable computer programs listed in the recited product list.

Therefore, it is respectfully requested that claim 7 satisfies the mandates of 35 U.S.C. §101 for utility.

C. CLAIMS 1, 2 and 4-6 (35 U.S.C. § 112)

Claims 1, 2, and 4-6 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because, according to the last office action, the preamble describes a method of providing product information whereas the body of the claim describes the process of offering a computer program. The rejection is respectfully traversed.

There is no inconsistency between the preamble and body of claim 1. The preamble of claim 1 recites a method of providing product information, while the body of claim 1 recites providing third party information about a computer program. As is well known, a computer program may be a product. For example, U.S. Publication No. 2002/0002538 by Ling (“Ling”), cited in a previous office action, discusses **software products** for sale or rental (Ling Abstract). It is respectfully submitted that the proposition that a “computer program is not considered a product unless it is tangibly

embodied” has no support in either law or common practice. The specification is also explicit that computer programs may be considered “products” listed in a product list 322 (Specification, page 28, lines 6-19).

Therefore withdrawal of the rejection of claims 1-3 and 6 under 35 U.S.C. § 112 is respectfully requested.

D. CLAIMS 1, 2, and 4-6 (35 U.S.C. § 103)

Claims 1, 2, and 4-6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,327,617 to Fawcett (“Fawcett”) in view of U.S. Patent No. 6,011,537 to Slotznick (“Slotznick”). The rejection is respectfully traversed.

There are three requirements to establish a prima facie case of obviousness. First, there must be some suggestion or motivation to modify a reference or to combine references. Second, there must be a reasonable expectation of success. Third, the prior art reference or combined references must teach or suggest all the claim limitations. See MPEP § 2143.

Claim 1 is patentable over the combination of Fawcett and Slotznick at least for reciting: “determining if the first window includes an offer to download a computer program.” Fawcett does not teach or suggest this limitation because Fawcett’s system provides both the offer to download and the downloadable program (Fawcett, FIG. 4B, steps 82 and 94). That is, Fawcett’s update service provides the window displaying the updates available for download, and therefore does not have to “determine” if that window includes an offer to download. Fawcett col. 10, lines 25-35, cited in the last office action, talks about the options available to the user to check for downloadable computer programs. Nothing in the cited sections teaches or suggests a computer program step of **determining** if a window includes an offer to download. Therefore, it is respectfully submitted that claim 1 is patentable over Fawcett and Slotznick.

Claim 1 is also patentable over the combination of Fawcett and Slotznick at least for reciting: “identifying the computer program.” Note that the computer program being identified is the one being offered for download in the first window. Again, there is no

need for Fawcett's service to identify programs listed in a window because Fawcett's service displays that window in the first place (Fawcett, FIG. 4B, step 82). Fawcett's service knows what it displays in the window so it does not need to identify the computer programs listed in the window. Fawcett col. 6, lines 29-49, co. 8, lines 43-59, and col. 11, lines 27-60, cited in the last office action, talk about identifying computer programs available for download, **not computer programs listed in the offering window**. As mentioned, that won't be necessary because it is Fawcett's service that creates and serves that window in the first place. Fawcett does not suggest or teach identifying computer programs listed in a window. Therefore, it is respectfully submitted that claim 1 is patentable over the combination of Fawcett and Slotznick.

Claim 1 is also patentable over the combination of Fawcett and Slotznick at least for reciting: "displaying a **second** window in the computer" (emphasis added). The combination of Fawcett and Slotznick operates on a **single** window, the one offering the computer program. In marked contrast, claim 1 requires a second window displaying third party information. Fawcett, col. 10, lines 53-64, talks about additional data displayed when the user chooses not to pay for a new version of computer program. Note, however, that Fawcett does not teach or suggest that this additional data is in a second window as required by claim 1. This is primarily because Fawcett conventionally operates on the same window. Therefore, it is respectfully submitted that claim 1 is patentable over the combination of Fawcett and Slotznick.

Claim 1 is also patentable over the combination of Fawcett and Slotznick at least for reciting: "the second window including **third-party** information about the computer program" (emphasis added). Note that Fawcett's service displays information about computer programs that the service itself is providing for download – this hardly constitutes **third-party information** about the computer program as Fawcett has a direct financial stake to provide the program. Also note that there is no ambiguity as to what a "third party" means as it is a common phrase. For example, the previously cited publication by Ling refers to third parties (Ling, Abstract).

Claim 1 is also patentable over the combination of Fawcett and Slotznick at least for reciting: "detecting an occurrence of a first window in the computer." As mentioned

in the last office action, Fawcett does not disclose the process of detecting an occurrence of a first window in the computer. This is not surprising given that Fawcett's service itself serves the window displaying the computer programs available for download – the service does not have to detect the occurrence of its own windows. Still, the last office action suggests that Slotznick discloses detection of occurrences of windows and it would have been obvious to combine Fawcett with Slotznick. Applicants respectfully disagree with this conclusion.

Firstly, Slotznick does not even disclose detection of occurrence of a window. Slotznick merely discloses displaying primary and secondary information in a display screen (Slotznick Abstract, Summary), not **detection of occurrences of windows** (i.e., when a window occurs in a computer). Slotznick col. 20, lines 40-50, col. 20, line 51 to col. 21, line 19, and col. 23, lines 55-67, and col. 40, lines 11-65, cited in the last office action, discuss displaying and detection of data. Although data may be displayed in a window or may be detected in a window, detection of data and detection of occurrence of windows are two very different things. Data and the window displaying the data are not the same. None of the cited portions of Slotznick discloses detection of occurrences of windows as required by claim 1.

Secondly, the proposed motivation to combine Fawcett with Slotznick is so that “the information is displayed to the user.” This motivation to combine is suspect because Fawcett already displays the listing of downloadable computer program to the user – Fawcett has no further need to display information to the user. The last office action also notes that “it would have been obvious to modify Fawcett in view of Slotznick in order to detect a window in the computer, since Slotznick teaches the process of detecting the occurrence of the windows in the computer.” Again, this motivation is suspect because Fawcett does not even need to detect its own windows. It is respectfully submitted that the last office action fails to provide a legitimate reason why it would be desirable to modify Fawcett with the teachings of Slotznick.

For at least the above reasons, it is respectfully submitted that claim 1 is patentable over the combination of Fawcett and Slotznick. Claims 2 and 4-6 depend on

claim 1 and are thus patentable over combination of Fawcett and Slotznick at least for the same reasons that claim 1 is patentable.

E. CLAIM 7 (35 U.S.C. § 103)

Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fawcett in view of Slotznick. The rejection is respectfully traversed.

Claim 7 is patentable over the combination of Fawcett and Slotznick at least for reciting: “a product list, the product list including a list of computer programs and a description of each of the computer programs, the description of each of the computer programs comprising **third-party information** that helps users decide whether they should install a computer program being offered for download” (emphasis added). As discussed above in regard to claim 1, the combination of Fawcett and Slotznick does not teach or suggest providing third-party information about computer programs being offered for download. For example, Fawcett col. 10, lines 42-64 and col. 5, lines 54-64, cited in the last office action, discusses information about computer programs available for download from Fawcett’s update service, which is the same service displaying the computer programs. Fawcett’s service is hardly third-party to the computer programs it is offering for download. Therefore, claim 7 is patentable over the combination of Fawcett and Slotznick.

Claim 7 is also patentable over the combination of Fawcett and Slotznick at least for reciting: “a window analyzer, the window analyzer including computer-readable program code **for detecting whether the new window is offering a computer program listed in the product list for download**” (emphasis added). The combination of Fawcett and Slotznick does not teach or suggest a window analyzer configured to detect whether a new window is offering a computer program for download. Fawcett col. 10, lines 25-43, cited in the last office action, discusses options available to the user to check for new computer programs and payment methods. However, the cited portions of Fawcett do not teach or suggest analyzing a new window to determine if the window is offering a computer program for download. Fawcett does not even need such a window analyzer as it serves the window displaying the programs available for download. Therefore, it is

respectfully submitted that claim 7 is patentable over the combination of Fawcett and Slotznick.

Claim 7 is also patentable over the combination of Fawcett and Slotznick at least for reciting: “the user interface manager including computer-readable program code **for displaying third party information** about the computer program offered in the new window and listed in the product list” (emphasis added). As explained above, the combination of Fawcett and Slotznick does not teach or suggest displaying of third party information about downloadable computer programs.

Claim 7 is also patentable over the combination of Fawcett and Slotznick at least for reciting: “a listener, the listener including computer-readable program code for detecting the opening of a new window.” As noted in the last office action, Fawcett does not disclose detection of opening of a new window. This is not surprising given that Fawcett’s service serves the window displaying the listing of downloadable computer programs, and therefore has no need for a listener to detect opening of a new window.

The last office action suggests, however, that Slotznick discloses a listener for detecting an opening of a new window and that it would have been obvious to modify Fawcett’s service with the teachings of Slotznick. There are several problems with this combination.

Firstly, Slotznick does not disclose anything that detects **opening of a new window**. Slotznick merely discloses displaying primary and secondary information in a display screen (Slotznick Abstract, Summary), not detection of opening of a new window (i.e., when a new window opens in a computer). Slotznick col. 20, lines 40-50, col. 20, line 51 to col. 21, line 19, and col. 23, lines 55-67, and col. 40, lines 11-65, cited in the last office action, discuss displaying and detection of data. Although data may be displayed in a window or may be detected in a window, detection of data and detection of opening of a new window are two very different things. None of the cited portions of Slotznick discloses detection of opening of a new window as required by the listener of claim 7.

Secondly, as explained in regard to claim 1, the proposed motivation to combine Fawcett with Slotznick is suspect for several reasons. For one, Fawcett does not even need detection of opening of a new window as its service displays the window listing the downloadable computer programs. Also, the proposed motivation of "the information is displayed to the user" does not carry any weight because Fawcett already displays the information it wants to provide the user. In other words, the last office action fails to prove that it is desirable to combine Fawcett with Slotznick.

For at least the above reasons, it is respectfully submitted that claim 7 is patentable over the combination of Fawcett and Slotznick.

VIII. CONCLUSION

For at least the above reasons, allowance of claims 1, 2, and 4-7 is respectfully requested.

Respectfully submitted,
Scott G. Eagle et al.

Dated: Sept. 28, 2009

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CLAIMS APPENDIX

CLAIMS INVOLVED IN THE APPEAL

1. A method of providing product information to a user, the method to be performed by computer-readable program code running in a computer, the method comprising:
 - detecting an occurrence of a first window in the computer;
 - determining if the first window includes an offer to download a computer program;
 - identifying the computer program; and
 - displaying a second window in the computer, the second window including third party information about the computer program.
2. The method of claim 1 wherein the first window is launched by a web browser.
4. The method of claim 1 wherein the act of identifying the computer program includes looking up a class identification (CLSID) of the computer program.
5. The method of claim 1 wherein the act of identifying the computer program includes consulting a product list.
6. The method of claim 5 wherein the product list is updateable by downloading a new product list from a remote computer to the computer.
7. A computer memory comprising:
 - a listener, the listener including computer-readable program code for detecting the opening of a new window;
 - a product list, the product list including a list of computer programs and a description of each of the computer programs, the description of each of the computer programs comprising third-party information that helps users decide whether they should install a computer program being offered for download;
 - a window analyzer, the window analyzer including computer-readable program code for detecting whether the new window is offering a computer program listed in the product list for download;
 - a user interface manager, the user interface manager including computer-readable program code for displaying third party information about the computer program offered in the new window and listed in the product list.

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EVIDENCE APPENDIX

a) U.S. Publication No. US 2002/0002538 by Ling.

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RELATED PROCEEDINGS APPENDIX

There are no documents or items submitted under this section.